

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RAUL GONZALES,

Plaintiff,

v.

KEN PAXTON,

Defendant.

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Civil Action No. **3:20-CV-1616-L-BH**

ORDER

On October 8, 2021, the United States Magistrate Judge entered the Findings, Conclusions and Recommendation of the United States Magistrate Judge (Doc. 16) (“Report”), recommending that the court, pursuant to 28 U.S.C. §§ 1915(A)(b)(1) and 1915(e)(2)(B)(i), dismiss with prejudice as frivolous this action by Plaintiff, which dismissal will count as a “strike” or “prior occasion” within the meaning 28 U.S.C. § 1915(g). Alternatively, the magistrate judge recommends that this action be dismissed without prejudice based on immunity if the court disagrees that Plaintiff’s Complaint and claims should be construed as those against Defendant Ken Paxton in his official capacity as the Texas Attorney General. No objections to the Report were filed as of the date of this order, and the deadline for doing so has expired.

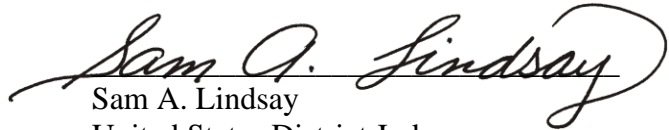
Having considered the pleadings, Report, file, and record in this case, the court determines that the magistrate judge’s findings and conclusions—as to the frivolous nature of this action by Plaintiff and suit against Ken Paxton, in his official capacity as the Attorney General of Texas, to once again challenge the constitutionality of Texas’s Sex Offender Registration Program, codified at Chapter 62 of the Texas Code of Criminal Procedure—are correct, and **accepted** as those of the court. Accordingly, pursuant to 28 U.S.C. §§ 1915(A)(b)(1) and 1915(e)(2)(B)(i), the court

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dismisses with prejudice as frivolous this action by Plaintiff, which dismissal **shall** count as a “strike” or “prior occasion” within the meaning 28 U.S.C. § 1915(g).

The court prospectively **certifies** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). In support of this certification, the court **accepts and incorporates** by reference the Report. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the Report, the court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Plaintiff, however, may challenge this finding pursuant to *Baugh v. Taylor*, 117 F. 3d 197 (5th Cir. 1997), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Fifth Circuit, within 30 days of this order.

It is so ordered this 30th day of November, 2021.


Sam A. Lindsay
United States District Judge